IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ASSOCIATION FOR SUBSTANCE ABUSE AND VIOLENCE PREVENTION, a Washington nonprofit corporation; DAVID GRUMBOIS, an individual, Appellants, and GRUSS, INC., a Washington corporation, Plaintiff, v. STATE OF WASHINGTON, Respondent, and JOHN MCKAY, BRUCE BECKETT, COSTCO WHOLESALE CORPORATION, THE YES ON 1183 COALITION, WASHINGTON RESTAURANT ASSOCIATION, MACKAY RESTAURANT GROUP, NORTHWEST GROCERY ASSOCIATION, SAFEWAY, INC., THE KROGER COMPANY, and FAMILY WINERIES OF WASHINGTON, Respondents/Intervenors.	)	No. 87188-4 En Banc Filed May 31, 2012

González, J. —This court was asked to determine whether Initiative 1183 (I-

1183) violates the single-subject and subject-in-title rules found in article II, section 19 of the Washington State Constitution. I-1183 removes the State from the business of distributing and selling spirits and wine, imposes sales-based fees on private liquor distributors and retailers, and provides a distribution of $10 million per year to local governments for the purpose of enhancing public safety programs. We hold that appellants have not overcome the presumption that the initiative is constitutional, and therefore we affirm summary judgment in favor of the State and intervenors.

I. Facts

I-1183 was approved by 59 percent of voters in the November 2011 general election. Wash. Sec'y of State, November 08, 2011 General Election Results, http://vote.wa.gov/results/20111108/measures.html. The ballot title of I-1183 states:

> Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor).
>
> This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution.
>
> Should this measure be enacted into law?
> [ ] Yes
> [ ] No

State of Washington Voters' Pamphlet, General Election 19 (Nov. 8, 2011).

The Twenty-First Amendment to the United States Constitution ended federal prohibition of the manufacture, sale, or transportation of intoxicating liquors, allowing each state to develop its own system for regulating the presence and use of alcohol within its boundaries. Washington adopted the Washington State Liquor Act (Liquor Act) to regulate intoxicating liquors. Laws of 1933, Ex. Sess., ch. 62; Title 66 RCW. The Liquor Act created the Washington State Liquor Control Board (LCB), RCW 66.08.012, and authorized it to administer the comprehensive control scheme developed in the act, RCW 66.08.020.

Beginning with the adoption of the Liquor Act, Washington has established distinct regulatory systems to control the distribution and sale of different types of liquor. Laws of 1933, Ex. Sess., ch. 62. The legislature enacted a "three-tier" system to govern the distribution and sale of beer and wine, which provided different regulations and licensing requirements for manufacturers, distributors, and retailers. Former RCW 66.28.280 (2009). The distributor tier was included to prevent manufacturers from exerting undue influence upon retailers and to provide an efficient means of tax collection. Three-Tier Sys. Review Task Force, Wash. State Liquor Control Bd., Beer and Wine Three-Tier System Review Task Force Report 11 (Nov. 2006), *available at* http://www.leg.wa.gov/JointCommittees/SCBW/

Documents/6-10-2008_LCB.pdf.

The three-tier system also allowed the State to control the price at which manufacturers and distributors sold beer and wine. Manufacturers were prohibited from "discriminat[ing] in price in selling to any purchaser for resale," former RCW 66.28.170 (2004), and distributors were similarly required to maintain a wholesale price list for beer and wine, from which they were not allowed to deviate, former RCW 66.28.180(1) (2009). Distributors were also prohibited from offering quantity discounts or selling below acquisition cost. Former RCW 66.28.180(1)(d) (2009).[1]

Unlike the three-tier system that applied to beer and wine, prior to I-1183 the State had a monopoly over the distribution and sale of spirits. *See* former RCW 66.16.010 (2005); Wash. State Liquor Control Bd., FY 2010 Annual Report 9-10, *available at* http://liq.wa.gov/publications/2010-annual-report-final-web.pdf. State liquor stores and closely regulated contract liquor stores were the sole purveyors of spirits for consumers and businesses that sold spirits by the glass. *Id.* at 10.

The Liquor Act also created the Liquor Revolving Fund, which consists "of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board." RCW 66.08.170. Since its adoption

[1] I-1183 left these restrictions in place for beer. *See* Laws of 2012, ch. 2, §§ 119, 121.

in 1933, the Liquor Act has provided that money in excess of the statutory minimum remaining in the Liquor Revolving Fund would be disbursed for a number of purposes unrelated to alcohol. *See* Laws of 1933, Ex. Sess., ch. 62, §§ 77, 78; RCW 66.08.190. Under the Liquor Act as it was originally approved, 30 percent of excess money in the Liquor Revolving Fund was to be distributed to the general fund of the State; 20 percent to the counties, to be placed in the old age pension fund; and the remaining 50 percent to the incorporated cities and towns of the state. Laws of 1933, Ex. Sess., ch. 62, § 78. Any city or town in which the sale of liquor was forbidden was not entitled to any share of the distributions; and if any unincorporated area of a county voted not to allow the sale of liquor, the population in that area would not be included in the computation of the population for distribution purposes. *Id.* § 78(2).

The Liquor Act currently provides funding for alcohol-related purposes, including the treatment of alcoholism, juvenile alcohol and drug abuse prevention programs, and wine and grape research at Washington State University. RCW 66.08.180. The legislature has continued, however, to provide general funding for state and local governments. The current version of RCW 66.08.190, which was not amended or repealed by I-1183, provides for distributions from the Liquor Revolving Fund to counties, cities, towns, border areas, and the State's general fund. Cities and unincorporated areas in which

the sale of liquor is forbidden as the result of an election are not entitled to any share in such distributions from the Liquor Revolving Fund. RCW 66.08.200 (unincorporated areas), .210 (cities).

Prior to the effort to pass I-1183, liquor reform promoters, including intervenor Costco, Inc., supported attempts to modify the State's liquor regulation system through legislation and initiatives to the people. I-1183 was designed to address the primary concerns that its supporters felt had impeded prior attempts to reform Washington's liquor laws, such as maintaining tax levels and revenue streams; "ensuring adequate funding (and penalties) for licensing and enforcement missions of the Liquor Control Board and, in their discretion, for related public health and safety efforts provided by local governments"; and limiting the number and type of retail outlets that would sell spirits for off-premises consumption. Clerk's Papers (CP) at 711-12 (Decl. of John Sullivan, Associate General Counsel at Costco, Inc.).

I-1183 dramatically changed the State's approach to regulating the distribution and sale of liquor in Washington. The initiative proposed to "[g]et the state government out of the commercial business of distributing, selling, and promoting the sale of liquor, allowing the State to focus on the more appropriate government role of enforcing liquor laws and protecting the public health and safety concerning all alcoholic beverages." Laws of 2012, ch. 2, § 101(2)(b).

To that end, I-1183 authorizes the State to auction off state liquor distribution and liquor store facilities and equipment. *Id.* § 102. The initiative allows private distributors to become licensed to distribute spirits, *id.* § 105, and allows a limited number of retail stores to sell spirits, *id.* § 103.

I-1183 imposes license fees on spirits retailers and distributors. Private retailers are required to pay a license issuance fee of 17 percent of their spirits revenue. *Id.* § 103(4). Retailers must also pay a flat license renewal fee of $166 per year. *Id.* § 103(5). Private distributors are required to pay a license issuance fee of 10 percent of revenue from sales of spirits made during the first two years and 5 percent of spirits revenue during subsequent years. *Id.* § 105(3)(a). Additionally, private distributors must pay an annual license renewal fee of $1,320 for each licensed location. *Id.* § 105(4). I-1183 provides that it "does not increase any tax, create any new tax, or eliminate any tax." *Id.* § 301.

I-1183 modifies the wine distribution system by allowing wine distributors and wineries to give discounts based upon competitive conditions, *id.* § 119, and allowing retailers and restaurants to distribute wine to their stores from a central warehouse, *id.* § 123. Wine retailers may also obtain retailer reseller endorsements, allowing them to sell wine to licensees who sell wine for consumption on their licensed premises. *Id.* § 104(2). An analogous retailer reseller endorsement was created for spirits retailers. *Id.* § 103(1).

The initiative additionally secures "the current distribution of liquor revenues to local governments and dedicate[s] a portion of the new revenues raised from liquor license fees to increase funding for local public safety programs, including police, fire, and emergency services in communities throughout the state." *Id.* § 101(2)(k). The additional portion is "ten million dollars per year from the spirits license fees [to] be provided to border areas, counties, cities, and towns through the liquor revolving fund for the purpose of enhancing public safety programs." *Id.* § 302.

I-1183 also modified the law pertaining to liquor advertising. The initiative removed a provision that prohibited the LCB from advertising liquor but maintained the LCB's "power to adopt any and all reasonable rules as to the kind, character, and location of advertising of liquor." *Id.* § 108. I-1183 also added that the LCB is prohibited from restricting the "advertising of lawful prices." *Id.* § 107(7).

I-1183 also amended the policy reasons behind the State's regulation of alcohol. *Id.* § 124. Prior to I-1183, the Liquor Act listed the State's

> goals of orderly marketing of alcohol in the state, encouraging moderation in consumption of alcohol by the citizens of the state, protecting the public interest and advancing public safety by preventing the use and consumption of alcohol by minors and other abusive consumption, and promoting the efficient collection of taxes by the state.

Former RCW 66.28.280 (2009). I-1183 removed the first two goals: orderly

marketing of alcohol and encouraging moderation in consumption of alcohol. Laws of 2012, ch. 2, § 124.

II. Procedural History

Appellants, the Washington Association for Substance Abuse and Violence Prevention (WASAVP), and David Grumbois, an individual who leased land to the State for a liquor store, filed an action against the State, challenging I-1183. Appellants contend that I-1183 contains multiple subjects, in violation of article II, section 19's single-subject rule. Additionally, appellants claim that I-1183's multiple subjects were not all expressed in the ballot title of the initiative, in violation of article II, section 19's subject-in-title rule. Supporters of I-1183 filed a motion to intervene as defendants, which the trial court granted.

The parties moved for summary judgment. The trial court found that the distribution of $10 million to local governments for public safety programs was not sufficiently related to liquor and that I-1183 therefore violated the single-subject rule. The court found that material issues of fact existed regarding the severability of that section of the initiative, however, and ordered a trial on that issue.

Intervenors filed a motion for reconsideration, asserting that the public safety provision did not violate the constitution. The trial court changed its

earlier decision, noting that the initiative's challengers had not sufficiently established the lack of a nexus between liquor regulation and public safety spending. The court granted the State's motion for summary judgment. This court granted direct review.

General Teamsters Local Union No. 174 and United Food and Commercial Workers Local Union No. 21 filed an amici brief in support of appellants. City and county government officials filed an amici brief expressing their interest in the implementation of I-1183 in their communities, particularly the allocation to local governments of liquor-related revenue for public safety purposes.

III. Issues

1. Does I-1183 violate the single-subject rule?

2. Does I-1183 violate the subject-in-title rule?

IV. Standard of Review

This court reviews summary judgment orders de novo. *Pierce County v. State*, 150 Wn.2d 422, 429, 78 P.3d 640 (2003).

V. Analysis

A. Standing

As an initial matter, intervenors contend that appellants lack standing to challenge I-1183. Br. of Intervenor-Resp'ts at 5 n.2. This court has established

a two-part test to determine standing to seek a declaratory judgment under the Uniform Declaratory Judgments Act, chapter 7.24 RCW. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). First, the interest sought to be protected must be "'arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *Id.* (internal quotation marks omitted) (quoting *Save a Valuable Env't v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978)). Second, the challenged action must have caused the challenger an injury in fact, economic or otherwise. *Id.*

Appellants have standing to challenge I-1183. First, both appellants appear to have interests that are regulated by I-1183. WASAVP's goal of preventing substance abuse and violence places it within the zone of interests of I-1183, which broadly impacts the State's regulation of alcohol. Grumbois leased property to the State for use as a liquor store, and I-1183 removes the State from the business of running liquor stores. Laws of 2012, ch. 2, § 102.[2]

[2] Intervenors argue that appellants are required to show that they are within the zone of interests of the law asserted as a basis for the challenge (Const. art. II, § 19), not the law targeted by the challenge (I-1183). Br. of Intervenor-Resp'ts at 5 n.2. The authority intervenors cite stands for the opposite proposition. In *Grant County*, the court found that fire districts lacked personal standing to bring a constitutional challenge against certain annexation statutes because the fire districts were not in the zone of interests of the *statutes*. 150 Wn.2d at 803. Similarly, in *To-Ro Trade Shows v. Collins*, the court found that a vehicle trade show producer lacked standing to bring a claim against a dealer licensing statute because the producer was not a vehicle dealer and therefore was not in the zone of interests protected by the statute. 144 Wn.2d 403, 414-15, 27 P.3d 1149

Second, both appellants have established injury in fact. Grumbois suffered injury because I-1183 required the State to terminate its lease with him. Although WASAVP has not suffered economic loss as a result of I-1183, its goals of preventing substance abuse could reasonably be impacted by I-1183's restructuring of Washington's regulation of liquor. Indeed, intervenors stress the established relationship between public safety and liquor, Br. of Intervenor-Resp'ts at 19, such that the increase in liquor availability would injure WASAVP's goals.

B. Article II, section 19

Turning to the constitutional challenges, appellants argue that I-1183 is unconstitutional under article II, section 19 of the Washington State Constitution. In approving an initiative measure, the people exercise the same power of sovereignty as the legislature does when it enacts a statute, *Wash. Fed'n of State Emps. v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995), and are subject to the same constitutional limitations, *City of Burien v. Kiga*, 144 Wn.2d 819, 824, 31 P.3d 659 (2001). Therefore, even if an initiative is approved by a majority of voters, it will be struck down if it violates Washington's constitution. *Id.* This court presumes that an initiative is constitutional, just as it presumes the constitutionality of a statute duly enacted

---

(2001).

by the legislature. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2000); *Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998).

Article II, section 19 provides, "No bill shall embrace more than one subject, and that shall be expressed in the title." This provision is to be liberally construed in favor of the legislation. *Amalgamated Transit*, 142 Wn.2d at 206; *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555. Nevertheless, "[w]e have declared that when laws are enacted in violation of this constitutional mandate, the courts will not hesitate to declare them void." *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24, 200 P.2d 467 (1948) (*Wash. Toll Bridge Auth.* I). Article II, section 19 applies to initiatives as well as to bills. *Wash. Fed'n of State Emps.*, 127 Wn.2d at 553-54.

There are two distinct prohibitions in article II, section 19: (1) the single-subject rule and (2) the subject-in-title rule. *Wash. Toll Bridge Auth.* I, 32 Wn.2d at 23. For the reasons discussed below, we find that I-1183 does not violate either rule.

1. The single-subject rule

The single-subject rule aims to prevent the grouping of incompatible measures and to prevent "logrolling," which occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he

or she disapproves in order to secure approval of an unrelated law. *Wash. Fed'n of State Emps.*, 127 Wn.2d at 552; *Amalgamated Transit*, 142 Wn.2d at 212.

In determining whether legislation contains multiple subjects, we begin with the title of the measure. *Amalgamated Transit*, 142 Wn.2d at 207. The ballot title of an initiative is the relevant title for analysis under article II, section 19, not the legislative title, if any exists. *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555. A ballot title consists of a statement of the subject of the measure, a concise description of the measure, and the question of whether or not the measure should be enacted into law. RCW 29A.72.050. A title may be general or restrictive; "in other words, broad or narrow, since the legislature in each case has the right to determine for itself how comprehensive shall be the object of the statute." *Gruen v. State Tax Comm'n*, 35 Wn.2d 1, 22, 211 P.2d 651 (1949), *overruled in part on other grounds by State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963). "In assessing whether a title is general, it is not necessary that the title contain a general statement of the subject of an act; '[a] few well-chosen words, suggestive of the general subject stated, is all that is necessary.'" *Amalgamated Transit*, 142 Wn.2d at 209 (alteration in original) (quoting *State ex rel. Scofield v. Easterday*, 182 Wash. 209, 212, 46 P.2d 1052 (1935)).

The parties agree that the ballot title is general, and we find so as well. I-1183's title indicates that it generally pertains to the broad subject of liquor. *See id.* at 208-11 (providing examples of general and restrictive titles).

Where a title is general, "'[a]ll that is required [by the constitution] is that there be some "rational unity" between the general subject and the incidental subdivisions.'" *State v. Grisby*, 97 Wn.2d 493, 498, 647 P.2d 6 (1982) (quoting *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wn.2d 392, 403, 418 P.2d 443 (1966)). "[T]he existence of rational unity or not is determined by whether the matters within the body of the initiative are germane to the general title and whether they are germane to one another." *Kiga*, 144 Wn.2d at 826 (citing *Amalgamated Transit*, 142 Wn.2d at 209-10); *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 638, 71 P.3d 644 (2003). There is no violation of article II, section 19 even if a general subject contains several incidental subjects or subdivisions. *Wash. Fed'n of State Emps.*, 127 Wn.2d at 556; *Grisby*, 97 Wn.2d at 498. Moreover, "'[f]or purposes of legislation, "subjects" are not absolute existences to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act.'" *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962) (*Wash. Toll Bridge Auth.* IV) (quoting *State ex rel.*

Test v. Steinwedel, 203 Ind. 457, 467, 180 N.E. 865 (1932)); *Amalgamated Transit*, 142 Wn.2d at 209-10.

Appellants argue that the challenged provisions lack rational unity with the general topic—which they characterize as "'liquor privatization'"—and with one another. Br. of Appellants at 23. Appellants contend that I-1183 violates the single-subject rule because along with the general topic of liquor privatization, the initiative includes a $10 million public safety earmark, privatizes wine distribution, impacts liquor advertising, and modifies the State's policy regarding liquor.

Turning first to the public safety earmark, this provision is germane to the general topic of I-1183, whether that is liquor or the narrower subject of liquor privatization, as appellants suggest. Although the public safety earmark is not restricted to use for facially liquor-related safety issues, *see* Laws of 2012, ch. 2, § 302, liquor has an obvious connection to broader public safety concerns than might feasibly be addressed by a more limited earmark. As local government officials assert in their amici brief, the burden of enforcing liquor sales laws and prosecuting offenders falls heavily on local governments. Br. of Amici Curiae Local Gov't Officials at 15; RCW 66.44.010(1) ("All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title . . . ."). Additionally, many violations of

the Liquor Act are misdemeanors or gross misdemeanors, punishable by imprisonment in the county jail. *See* RCW 66.44.140 (classifying unlawful sale of liquor as a gross misdemeanor and establishing punishment of confinement in county jail), .180. It would be improper to overlook the impact that changes to liquor regulation could have on general public safety expenditures by local governments.

Moreover, the legislature's recognition of the relationship between liquor regulation and public welfare supports our finding that these issues share rational unity. *See Wash. Fed'n of State Emps.*, 127 Wn.2d at 575 (Talmadge, J., concurring in part/dissenting in part) (proposing that considering whether the legislature has historically treated issues together is relevant to analysis of a law under the single-subject rule). Indeed, the general purpose of the Liquor Act is "for the protection of the welfare, health, peace, morals, and safety of the people of the state," RCW 66.08.010; *Barrett v. Lucky Seven Saloon, Inc.*, 152 Wn.2d 259, 273, 96 P.3d 386 (2004), and the Liquor Act has provided general revenue for the state and for local governments since its first enactment, Laws of 1933, Ex. Sess., ch. 62, §§ 77, 78. I-1183's provision of funds for public safety actually has a closer nexus to the subject of liquor than does the general revenue provision that has existed since the State began regulating liquor.

On the other hand, appellants contend that the liquor reform supporters'

prior unsuccessful attempts to privatize liquor distribution and sales demonstrate the existence of logrolling in I-1183; in other words, that the initiative was designed to attract voters who did not approve of liquor privatization but did favor an increase in funding for public safety programs. *See* Br. of Appellants at 24. Nevertheless, given the State's continued recognition of the connection between liquor regulation, public safety, and revenue generation, we find that appellants have not established that I-1183's public safety earmark is the result of logrolling, rather than the product of permissible law making.

Appellants next argue that I-1183's privatization of the distribution and sale of spirits is not germane to its deregulation of the private distribution of wine, in violation of the single-subject rule. Br. of Appellants at 26-30. Appellants rely on prior decisions in which this court has found that although the challenged provisions of a law may have shared a general subject outlined in the title of the measure, the provisions did not share a rational unity among one another. In *Barde v. State*, 90 Wn.2d 470, 584 P.2d 390 (1978), for example, this court reviewed the constitutionality of an act "'relating to the taking or withholding of property,'" which created criminal sanctions for dognapping and allowed recovery of attorney fees in a civil replevin action. *Id.* at 471 (quoting Laws of 1972, 1st Ex. Sess., ch. 114). The court found that although the two

provisions may have been germane to the topic of taking or withholding property, there was no rational unity between criminal sanctions for dognapping and attorney fees in a civil action. *Id.* at 472. The court struck down the law under article II, section 19. *Id.* at 470, 472.

In *Amalgamated Transit*, this court reviewed the constitutionality of Initiative 695, which set license tab fees at $30 and required voter approval of all future state and local tax increases. 142 Wn.2d at 191. We found that the initiative's subjects were germane to the general topic of tax limitation but that there was no rational unity between the subjects. *Id.* at 217. The court held that the initiative violated the single-subject rule. *Id.*

In *Kiga*, this court considered the constitutionality of Initiative 722, which sought to nullify specific tax increases and to change the method of assessing property taxes. 144 Wn.2d at 827. Both provisions related to the general topic of tax relief, but the court found that they were not germane to one another. *Id.* The first provision would reverse various tax increases and provide a one-time refund, implicating a number of different types of charges, while the change in tax assessment would be permanent and restricted to property taxes. *Id.* The court found that the initiative violated the single-subject rule. *Id.* at 828.

There is a closer nexus between I-1183's provisions affecting spirits and

wine, however, than there was in the relevant provisions examined in *Barde*, *Amalgamated Transit*, and *Kiga*. Unlike the subjects combined by the law examined in *Barde*, spirits and wine share the common distinction of being liquor and have been governed as such by the same act for decades. *See* Laws of 1933, Ex. Sess., ch. 62, § 3 (defining "liquor"). Moreover, unlike the subjects at issue in *Amalgamated Transit* and *Kiga*, I-1183's changes to the regulation of spirits and wine do not combine a specific impact of a law with a general measure for the future. *See Amalgamated Transit*, 142 Wn.2d at 217; *Kiga*, 144 Wn.2d at 827; *see also Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 523-25, 304 P.2d 676 (1956) (*Wash. Toll Bridge Auth.* II) (finding an act embraced two subjects because it granted continuing power to build toll roads and provided for the construction of a particular toll road).

Appellants next contend that I-1183's change to liquor advertising regulations is unrelated to the rest of the initiative. Br. of Appellants at 30-31. This argument lacks merit, as liquor advertising is germane to the general subject of I-1183, as well as to the individual provisions of the initiative.

Finally, appellants assert that the modifications to the legislative findings on the three-tier system constitutes a separate subject. *Id.* at 31. Policy expressions, however, do not contribute additional subjects within the meaning of the single-subject rule. *Pierce County*, 150 Wn.2d at 434. I-1183's policy

changes do not constitute a different subject from the rest of the initiative.[3]

2. The subject-in-title rule

The purpose of the subject-in-title rule is to notify members of the legislature and the public of the subject matter of a measure. *Power, Inc. v. Huntley*, 39 Wn.2d 191, 198, 235 P.2d 173 (1951). "'[A] title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.'" *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555 (alteration in original) (quoting *Young Men's Christian Ass'n v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963)). The title need not be an index to the contents, nor must it provide details of the measure. *Amalgamated Transit*, 142 Wn.2d at 217 (citing *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555). Although a measure's title can be broad and general—without any particular expressions or words required—the material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that "no person may be deceived as to what

[3] Appellants additionally contend that I-1183 is not "comprehensive" and that the provisions impacting spirits and wine are separate subjects because they deal with discrete parts of a larger topic. Br. of Appellants at 26-27. This argument lacks merit. The cases cited by appellants merely state the rule that broad, comprehensive legislation does not necessarily violate the single-subject rule, not that legislation must be comprehensive to avoid violating the single-subject rule. *See, e.g., Kueckelhan*, 69 Wn.2d at 403-04 (finding that the comprehensive insurance code did not violate the single-subject rule by establishing the offices of insurance commissioner and state fire marshal); *McQueen v. Kittitas County*, 115 Wash. 672, 682, 198 P. 394 (1921) (article II, section 19 was not intended to prevent enactment of a complete law on a given subject).

matters are being legislated upon." *Seymour v. City of Tacoma*, 6 Wash. 138, 149, 32 P. 1077 (1893); *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897) ("[A] title which is misleading or false is not constitutionally framed."). Any "'objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act unconstitutional.'" *Wash. Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359, 372, 70 P.3d 920 (2003) (internal quotation marks omitted) (quoting *Nat'l Ass'n of Creditors v. Brown*, 147 Wash. 1, 3, 264 P. 1005 (1928)).

As an initial matter, intervenors assert that the pre-election review under RCW 29A.72.080 was the appropriate proceeding for appellants to challenge I-1183's title and that appellants are now precluded from raising a subject-in-title challenge. Br. of Intervenor-Resp'ts at 43-46. Under RCW 29A.72.080, a person may challenge the ballot title of an initiative in Thurston County Superior Court within five days of its filing with the Secretary of State. The superior court then examines the ballot title, measure, and objections "and shall, within five days, render its decision . . . ." RCW 29A.72.080. This preliminary decision regarding the ballot title is final. *Id.* Intervenors rely on *Kreidler v. Eikenberry*, 111 Wn.2d 828, 834, 766 P.2d 438 (1989), in which this court refused to review the ballot title decision of a superior court and noted that "the public interest is served by finality in this matter." *Kreidler* is inapposite to this

case, however, as appellants do not challenge the result of the ballot title determination, but rather the constitutionality of the law itself. Intervenors' interpretation of *Kreidler* and analogous cases would improperly constrain any constitutional challenge to initiatives to the expedited process of ballot title adjudication.

Appellants argue that the "license fees based on sales" listed in the ballot title are actually taxes and that I-1183 violates the subject-in-title rule because the title does not notify voters that the charges imposed are taxes. Br. of Appellants at 43. Words in the title of legislation "'must be taken in their common and ordinary meanings, and the legislature cannot in the body of an act impose another or unusual meaning upon a term used in the title without disclosing such special meaning therein.'" *Amalgamated Transit*, 142 Wn.2d at 226 (internal quotation marks omitted) (quoting *DeCano v. State*, 7 Wn.2d 613, 626, 110 P.2d 627 (1941)). I-1183 imposes "license issuance fees" on spirits retailers and distributors, calculated as a percentage of sales that is deposited into the Liquor Revolving Fund. Laws of 2012, ch. 2, § 103(4) (retailers); *id.* § 105(3) (distributors). The issue is thus whether the phrase "license fees based on sales," found in I-1183's ballot title, is misleading or false. *See Seymour*, 6 Wash. at 149.

Appellants assert that we should refer to legal distinctions between

taxes and fees, Br. of Appellants at 44, but that would ignore the subject-in-title rule's purpose of providing notice to the public of the contents of the measure, *see Amalgamated Transit*, 142 Wn.2d at 217. We turn instead to the common meaning of the term "fee" because "[i]n construing the meaning of an initiative, the language of the enactment is to be read as the average informed lay voter would read it." *W. Petroleum Imps., Inc. v. Friedt*, 127 Wn.2d 420, 424, 899 P.2d 792 (1995); *see also Seymour*, 6 Wash. at 149 ("As the constitution has not indicated the degree of particularity necessary to express in its title the subject of an act, the courts should not embarrass legislation by technical interpretations based upon mere form or phraseology.").

In *Amalgamated Transit*, the initiative at issue asked whether "'voter approval [shall] be required for any *tax* increase,'" without indicating that the definition of "tax" included in the body of the measure was broader than the ordinary definition of the term. 142 Wn.2d at 227. As defined in the body of the initiative, "tax" included a variety of specific taxes as well as "'impact fees, license fees, permit fees, and any monetary charge by government.'" *Id.* at 193. The court found that other, narrower definitions, such as "'a forced contribution of wealth to meet the public needs of a government,'" likely accorded with the general informed voter's understanding of the term "tax." *Id.* at 219 (quoting

Webster's Third New International Dictionary 2345 (1986)). The court found the initiative violated the subject-in-title rule because its title did not give notice to voters that the meaning of "tax" in the measure was broader than its common meaning. *Id.* at 227.

In *DeCano*, this court considered the constitutionality of a statute entitled "'An Act relating to the rights and disabilities of aliens with respect to land[s],'" which amended an act that prohibited ownership of land by aliens. 7 Wn.2d at 623-24 (quoting Laws of 1921, ch. 50, at 156). Respondents contended that the statute violated the subject-in-title rule because it modified the definition of "alien," without indicating that change in its title. *Id.* at 623-24. The earlier act provided that "'"[a]lien" does not include an alien who has in good faith declared his intention to become a citizen of the United States.'" *Id.* at 623. The amendatory statute, however, expanded the definition of "alien" to "'include all persons who are non-citizens of the United States and who are ineligible to citizenship by naturalization.'" *Id.* at 624. The court noted that the amendatory statute's definition of the term "brings within its purview a whole new class of persons who are not in fact aliens in common understanding, by judicial construction, or under the express definition contained in the prior

[4] Although we considered the judicial and statutory definitions of the term "alien" in *DeCano*, the court apparently used that analysis to inform its understanding of the common and ordinary meaning of the term, rather than to impose a technical legal definition of the term onto its common meaning. *See DeCano*, 7 Wn.2d at 626 ("'Words in a title must be taken in

law."[4] *Id.* The court found that the title of the amendatory law gave no indication of this expanded definition and that it therefore violated article II, section 19. *Id.* at 624, 627.

Unlike the titles of the laws at issue in *Amalgamated Transit* and *DeCano*, I-1183's ballot title provided voters with adequate notice of the scope and purpose of the license fees. A common understanding of the term "fee" is "a charge fixed by law or by an institution (as a university) for certain privileges or services <a license [fee]> . . . ." Webster's Third New International Dictionary 833 (2002). The license issuance fees under I-1183 correspond with this common meaning, as they are charges for the privilege of selling liquor in Washington State. It is important to note that I-1183's ballot title accurately states that the "license issuance fees" included in the body of the initiative are *based on sales*. *Cf. Amalgamated Transit*, 142 Wn.2d at 227 (noting that the ballot title asked voters whether "'voter approval [shall] be required for any *tax* increase' without any indication in the title that 'tax' has a meaning broader than its common meaning"); *DeCano*, 7 Wn.2d at 624 (finding that the title of the statute "states that it pertains to the rights of 'aliens' with respect to land, but it gives no intimation whatsoever that the body of the act contains an

---

their common and ordinary meanings . . . .'" (quoting 59 C.J. Statutes § 390, at 810 (1932))); *see also Amalgamated Transit*, 142 Wn.2d at 219 ("Language in an initiative should be construed as the average informed voter voting on the initiative would read it.").

amended definition of the word 'alien'"). The phrase "license fees based on sales" is sufficient to indicate to an inquiring mind the scope and purpose of that provision of I-1183.

The challenged portion of I-1183's ballot title is not palpably misleading or false. We have defined "fee" as a legal term of art in some particular contexts. *See, e.g., Covell v. City of Seattle*, 127 Wn.2d 874, 879, 905 P.2d 324 (1995) (applying factors to determine whether a charge imposed by the government is a tax or regulatory fee). But we will not void a law duly enacted by voters based upon "the technical significance of a word, where it can hardly be contended that anyone was likely to be deceived." *Seymour*, 6 Wash. at 149. On numerous occasions, we have rejected ballot title challenges based on nuances between terms. *See, e.g., id.* ("The real purpose of this act would have been better expressed had the word 'provide' been used, but we think the word 'construct,' under all the circumstances, may be accorded a similar meaning . . . ."); *N. Cedar Co. v. French*, 131 Wash. 394, 418-19, 230 P. 837 (1924) (holding that "agricultural product" referenced in title included forestry product, based on liberal construction of the constitutional provision and the "'broad sense'" of the term), *modified on other grounds on reh'g*, 133 Wn.2d 692, 233 P. 39 (1925). We find that the phrase "license fees based on sales" accurately expresses the underlying subject contained in the body of the initiative.[5]

VI. Conclusion

Appellants have not overcome the presumption that I-1183 meets the Washington State Constitution's single-subject and subject-in-title rules under article II, section 19. We affirm the trial court's order of summary judgment in favor of the State and intervenors.

[5] The dissent focuses on the legal distinction between taxes and fees, but we find that this analysis ignores our role of construing the language of the initiative as the average informed voter would have read it. *See Amalgamated Transit*, 142 Wn.2d at 219. We leave for another day the issue of whether the "license fees based on sales" withstands scrutiny under the legal definition of a "fee."

AUTHOR:
Justice Steven C. González

WE CONCUR:
Chief Justice Barbara A. Madsen
Justice James M. Johnson
Justice Debra L. Stephens
Justice Susan Owens